U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-B-A-

DATE: APR. 22, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks classification as a member of the professions holding an advanced degree. *See* § 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. We found that the record supports that conclusion. We upheld the Director's decision, and dismissed the appeal. The Petitioner filed two subsequent motions. In our decisions on those motions, we upheld our previous decision.

The matter is now before us on the Petitioner's third motion, a joint motion to reopen and reconsider. On motion, the Petitioner submits a brief and new evidence. The Petitioner argues that he meets the three-prong national interest waiver analysis set forth in *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998). We will deny the motions.

I. ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 10, 2013, seeking a national interest waiver of the job offer requirement. *NYSDOT* set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *NYSDOT*, 22 I&N Dec. at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Director found that the Petitioner's employment as a special education teacher was in an area of substantial intrinsic merit, but that the benefits of such work were not national in scope. The Director

noted that although education is in the national interest, the impact of a single teacher in one school would not be national in scope for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. *Id.* at 217, n.3. In addition, the Director determined that the Petitioner's past achievements as a special educator did not justify projection that he would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We upheld the Director's findings in our three previous decisions.

A. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citations to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, with respect to the national scope of his work, the Petitioner repeats arguments made earlier in these proceedings concerning his proposal for creating a non-profit foundation focused on implementing a high school life skills program in classrooms across the United States. The Petitioner states that his proposal addresses high school students with cognitive disabilities and how they can be better served in the classroom through effectively trained special education teachers. In addition, the Petitioner claims that his proposal will improve employment placement for such students "through skill potential adaptation." The Petitioner, however, does not explain how our previous findings under *NYSDOT* had legal errors or misstatements of fact that would warrant reconsideration.

Previously, the Petitioner submitted December 2014 webpages from [redacted] that stated: [redacted] is to be formalized into a foundation. Based on the proposal, the whole program will take three years from conception to evaluation. [redacted] as a website will implement the proposed modules for Life Skills for teachers' training and education." The Petitioner also provided a "Timeline for Implementation of Proposal" dated December 9, 2014. As the [redacted] foundation apparently did not exist, even as a proposal, when the Petitioner filed the Form I-140 on June 10, 2013, the Petitioner's subsequent development and dissemination of the proposal cannot retroactively qualify him for that earlier priority date. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Regardless, there is no documentary evidence reflecting that any school systems have implemented the proposal or that his foundation has received financial grants from any government, non-profit, business, or educational organization. Furthermore, the record does not demonstrate his influence on the field as a special education program developer or resource consultant. Accordingly, we uphold our previous findings that the Petitioner has not demonstrated that the benefits of his work will be national in scope, or shown that his work has influenced the field of special education as a whole.

In addition, the Petitioner contends that his expertise in computer technology, writing skills, nineteen years of experience in the field of education, professional credentials, and "highly effective" job

proficiency ratings represent unique qualifications that are not amenable to the labor certification process. The inapplicability or unavailability of a labor certification, however, cannot be viewed as sufficient cause for a national interest waiver; a petitioner still must demonstrate that he will serve the national interest to a substantially greater degree than do others in his field. *NYSDOT*, 22 I&N Dec. at 218, n.5.

The Petitioner does not support the motion to reconsider with any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law, regulation, or USCIS policy. In addition, the motion does not establish that our latest decision was incorrect based on the evidence of record at the time of the decision. Therefore, the motion to reconsider is denied.

B. Motion to Reopen

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

With the current motion, the Petitioner submits a letter from Director of the thanking the Petitioner for his "letter to dated May 27, 2015" in which the Petitioner shared his proposal entitled, While thanks the Petitioner for sharing his work, he states that his office is "not able to advocate for particular programs and organizations."

In addition, the Petitioner provides an August 2015 letter from thanking the Petitioner "for writing, and for providing your thoughtful suggestion." The letter from thanks the Petitioner for his correspondence, but does not indicate that intends to advance the Petitioner's specific proposal. The letter only affirms the commitment to the American's with Disabilities Act, and lists telephone numbers and websites where people with disabilities can access government services. There is no documentary evidence showing that the components of the Petitioner's program and its modules have had a national impact or have otherwise influenced the field of special education as a whole.

The Petitoner also submits his 2015 "Evaluation Review" form from reflecting "highly effective" proficiency ratings in various competency categories. The teacher performance evaluation, however, covers a time period after the Form I-140 was filed. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly,

we cannot consider any performance review periods after June 10, 2013, the date the petition was filed, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, this evidence does not demonstrate that the Petitioner's special education work has had a significant impact outside of his school or has otherwise affected the field as a whole.

The motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. The Petitioner has not demonstrated a past record of achievement at a level that would justify a waiver of the job offer requirement. The Petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, a petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). Accordingly, the motion to reopen is denied.

II. CONCLUSION

In this matter, the Petitioner has not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest of the United States. As the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision, and the motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy, the motions are denied. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-B-A-*, ID# 16961 (AAO Apr. 22, 2016)